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VIA ELECTRONIC FILING

July 17, 2020

The Honorable Comer H. “Randy” Randall, Chairman
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Responsive Comments on Procedure to Address Conceptual Issues Around Non-Allowable Expenses (See Page Number 4 of Order No. 2019-341), Docket No. 2019-232-A

Dear Chairman Randall:

Dominion Energy South Carolina, Inc. (“DESC”) is pleased to file the following comments in response to the comments filed in this proceeding by Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and the South Carolina Office of Regulatory Staff (“ORS”).

DESC’s position has not changed since the comments it filed on September 6, 2019. Under South Carolina law, a utility’s expenses submitted in a rate request are presumed to be “reasonable and incurred in good faith” until a showing is made to call them into question. *Hamm v. S.C. Pub. Serv. Comm’n*, 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992). When a party wishes to dispute expenses, that party must present a *prima facie* showing that the expenses in question are improper or provide evidence otherwise raising a reasonable prospect that the expenses are improper. *Hamm*, 309 S.C. at 286, 422 S.E.2d at 112. Thereafter, the utility must be given the opportunity to make a showing that such expenses are reasonable and justified. *See Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011). The Commission then



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evaluates the record and may disallow expenses if the evidence does not establish that they were valid costs of utility operations or that they were imprudent. *See Hamm*, 309 S.C. at 286, 422 S.E.2d at 112. This approach is grounded in the rule that in setting a just and reasonable rate, “it is important that there be enough revenue *not only for operating expenses* but also for the capital costs of the business.” *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (emphasis supplied); *see also* S.C. Code Ann. § 58-27-810.

In its day-to-day operations, DESC maintains policies concerning a broad range of specific expense items to ensure that expenses that are not valid utility expenses are recorded “below-the-line” and so are not included in utility rate requests. Those policies incorporate the guidance provided by this Commission in various orders as well as guidance from the Federal Energy Regulatory Commission’s (“FERC”) Uniform System of Accounts. DESC invests time and effort in training employees and supervisors concerning the importance of applying these policies as written. ORS receives a copy of these policies and procedures annually for review, and DESC is receptive to any comments ORS may provide concerning them. In cases where individual expense items are inadvertently assigned incorrectly, DESC records a correction immediately upon discovery.

DESC believes that this approach to non-allowable expenses is fully sufficient and follows clear South Carolina legal precedent.

As set forth in the prior letter, disputes have arisen where ORS has challenged what are otherwise entirely appropriate costs by asserting that the documentary evidence related to them is insufficient. One example—as explained in DESC’s prior letter—was ORS’s challenge to the cost of water, soft drinks and snacks provided to employees who were working extended hours in an emergency storm restoration effort. The employee submitting the expense report verified the purpose and use of these items, and the supervisor agreed. ORS sought to disallow the expenses because the documentation submitted did not list each storm restoration worker who received water, soft drinks and snacks by name. This action by ORS would seem to be inconsistent with the rule that utility expenses are presumed reasonable unless some evidence raising doubt about their appropriateness is adduced.

Another ORS disallowance involved otherwise allowable costs for training sessions, which ORS challenged because all employees were not required to complete sign in sheets for the training and the sign in sheets were not attached to the invoice for the expense. ORS did not consider the electronic invitation list and agenda for the training session, which were provided to justify the expense, as sufficient to establish its nature and business purpose. Again, this action would seem inconsistent with the general rule presuming reasonableness of expenses until contrary facts are adduced.

Nothing in ORS’s proposed regulation addresses these issues. DESC believes that under the presumption of prudence as to utility expenses, where employees document expenses in



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conformity with reasonable recordkeeping and documentation policies established by the utility, those expenses should not be disallowed absent some affirmative evidence indicating that the expenses are unreasonable.

The second group of disputed cases involves expenses that fall in areas where the decision as to whether an expense should be allowable or not properly involves the application of specific guidelines established in the exercise of reasonable business discretion. For example:

- Grants to third parties are generally not considered to be customary utility expenses. But economic development grants, if reasonable in scope and justified by the likely impact of the development opportunity they support, may be highly beneficial to customers and may serve to reduce rates to all customers by causing the electric and gas systems to operate more cost efficiently. ORS proposes to deny recovery of all such grants. Instead, as DESC has argued, utilities should be encouraged to adopt specific guidelines and policies concerning the amount and justification of grants to be considered allowable expenses. If those guidelines are reasonable and applied properly, then grants made in conformity with them should be recognized.
- Gifts are not generally considered to represent valid utility expenses. However, service awards recognizing employees for decades of work on behalf of customers can be an effective and cost-justified means of improving morale, communicating a culture of respect for individuals, and motivating the retention of valuable employees by honoring those who provide decades of service. Such expenses are recognized as a valid business practices across the U.S. economy. DESC would propose that if awards are reasonable in value and given for an appropriate duration of service, they should be recognized as valid utility expenses. Accordingly, utilities should be encouraged to adopt specific guidelines and policies as to the value and timing of service awards. If those guidelines are reasonable and applied properly, then service awards granted in conformity with them should be recognized as allowable expenses.
- Under ordinary circumstances, fully stocking kitchens in work locations is not generally an allowable utility expense. But the cost of providing coffee, tea, sugar and creamers, and other simple kitchen supplies for employees, so long as reasonable in amount and cost, allows employees to take coffee breaks on site. This is generally recognized to be a valid business practice across the US economy. There is no reason that such expenses should not also be so recognized for utility purposes.

In each case, ORS's proposed blanket regulation would remove the possibility of utilities adopting reasonable guidelines allowing limited but beneficial expenditures in these and other areas to be recognized for ratemaking purposes. DESC believes that the delineation as to what may be recorded "above the line" for these and other areas should be made initially in the expense policies



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issued by the utility. As indicated above, these policies are submitted annually to ORS for review. ORS or any other party would then be authorized to challenge either the policies or their application in specific instances under the generally applicable legal rules and presumptions as to utility expenses as set forth above.

On the other hand, adopting a blanket disallowance of broad categories of costs without consideration of whether certain items within those categories may be cost justified and beneficial to customers contravenes the legal precedents cited above. The Commission is “entitled to make an independent determination about whether a [u]tility met its burden of proof” when submitting expenses. *Utilities Servs. of S.C., Inc.*, 392 S.C. at 106, 708 S.E.2d at 761. As the South Carolina Supreme Court explained:

[W]e hold the PSC is the ultimate fact-finder in a ratemaking application. It has the power to independently determine whether an applicant has met its burden of proof. The PSC is not bound by ORS’s determination that an expenditure was reasonable and proper for inclusion in a rate application. The PSC may determine— independent of any party—that an expenditure is suspect and requires further scrutiny. To accept the contention that the PSC is bound by the recommendations of ORS would place ORS in the same untenable dual investigative—adjudicative role that challenged the PSC prior to the 2004 amendments.

Id. Adopting regulations which, in effect, deny a utility the opportunity to present evidence justifying expenses before they are disallowed is a clear violation of substantive and procedural due process. *See* S.C. Const. art. I, § 22; *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989); *accord, S. Bell Telephone & Telegraph Co. v. S.C. Pub. Serv. Comm’n*, 270 S.C. 590, 595-96, 244 S.E.2d 278, 281 (1978).

Additionally, ORS’s proposal will not achieve the claimed purposes of promoting judicial economy, streamlining the inspection, audit and examination of public utilities and benefiting customers. To the contrary, the overbroad nature of the proposed regulation is likely to breed disputes, litigation, and unintended consequences.

For example, a regulation that disallows “imprudent or excessive expenses,” “non-essential employee training,” “non-essential employee benefits” or “uneconomic management of costs”— as ORS’s proposal does—invites confusion and litigation as to what these very subjective terms mean. Prohibiting all “development grants and sponsorships” would injure, not benefit, customers, particularly those in rural and underdeveloped areas in the state where utility support for development projects can be particularly necessary and beneficial. For these reasons, DESC submits that ORS’s proposal does not represent an improvement over current practice.



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In addition, there is one part of ORS's proposal that is particularly misaligned with accounting rules and practice. ORS proposes that the Commission adopt a rule disallowing all costs that include "inflation, expense estimates, and contingencies." The proposed rule would fundamentally disrupt established principles of utility regulation and accounting.

For example:

1. Under existing Commission orders and direct mandates of the Financial Accounting Standards Board, current expenses recorded for future pension costs and other post-retirement health benefits (OPEBs) must reflect *estimated future costs plus inflation*. These *estimated amounts with inflation* must be booked as a current expense to ensure that current customers pay the full cost of the labor employed in providing service to them. The ORS proposal to disallow estimates is in direct conflict with these requirements.
2. Nuclear outage accruals and major maintenance accruals ensure that current rates reflect the cost of the future maintenance activities caused by the current use of these generating assets. These accruals necessarily involve estimates of *future maintenance costs and reflect the impact of inflation on the amounts recorded*. The ORS proposal to disallow estimates is in direct conflict with these accounting requirements as well.
3. Depreciation is an expense that reflects an estimate of the remaining useful life of an asset as well as the *estimated future salvage and cost of removal*. Nuclear decommissioning expense is also based on *estimated future salvage and decommissioning expense*. The ORS proposal to disallow estimates is in direct conflict with both of these requirements.

These are not isolated examples. Uncollectable accounts and bad debt expenses, property and casualty expenses, expenses booked for employee sick leave and vacation, expenses for injuries and damages, and expenses for many other items are based on estimates. As a general rule, accrual accounting requires a utility to recognize an expense when a liability is incurred, even if the amount of that expense must be estimated. Those estimates are revised as additional information is obtained. ORS's proposed rule is fundamentally at odds with the basic principle underlying accrual accounting.

Beyond that, much of ORS's proposed rule is a restatement of general provisions of regulatory accounting that are well understood and are appropriately applied by DESC and other utilities in the ordinary course. These include principles related to advertising and institutional promotion, mergers and acquisitions, fines and penalties, lobbying and political activities, and charitable expenses. The proposed regulation adds nothing to regulatory accounting practice by



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listing these items. But under current practice, where exceptions to these general principles are mandated, the current structure allows for them to be proposed.¹

For these reasons, DESC respectfully requests that the Commission not adopt ORS's proposal, but instead preserve the flexibility and legal certainty of the current approach. The Commission should direct utilities to adopt clear and detailed expense policies, and to allow parties to challenge those policies and the expenses booked under them based on existing legal standards in ratemaking proceedings.

Thank you for the opportunity to comment on this matter.

Best regards,

Womble Bond Dickinson (US) LLP

/s/ Belton Zeigler

Belton Zeigler
Partner

¹ For example, ORS proposes a general prohibition on advertising that promotes "increased consumption" of utility service. Such a prohibition would prohibit an electric utility from promoting electric vehicle charging technologies or other electrification initiatives that might be justified as clean energy initiatives.